

Remarks

Claims 1-19 were pending in this Application. No claims have been canceled, added or amended. Thus claims 1-19 remain subject to continued examination.

Non-Statutory Double Patenting Rejections

Claims 1-19 stand provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-7 of co-pending Application No. 10/121,224.

Applicants note that Application No. 10/121,224 was issued as US Patent No. 6,703,434 on March 9, 2004. Furthermore, Claim 7 of the parent Application was canceled and the current Application was filed as a continuation claiming the inventive process of original Claim 7 as Claim 1 here presented. Applicants will be willing to provide a terminal disclaimer if requested to obviate any obviousness-type double patenting.

Obviousness Rejections

Claims 1-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 5,891,940). Continued rejection on this basis is respectfully traversed and reconsideration is requested.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP § 2143.03). Applicant respectfully submits that, as best understood, Chen fails to teach a process that yields a syndiotactic polypropylene that has the crystallization temperature characteristics recited in the claim and that also exhibits the Cell II/Cell III content ratio of at least 45/55. Moreover, Chen does not appear to provide a process yielding the clarity levels recited in independent claim 15.

As noted at MPEP §2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Controlling case law indicates that a determination of inherency must be based on what was necessarily present in the prior art rather than on what would result due to optimization. *In re Oelrich*, 666 F.2d 578, 212 USPQ 323 (CCPA 1981).

Certainly Applicant does not argue that a 70-75% sPP concentration is outside the scope of the cited art. However, this recital is merely a test condition for evaluation of crystallization temperature recited in the same manner that the cooling rate is recited.

As regards the various claim limitations, Applicant respectfully submits that there is no evidence that the syndiotactic polypropylene produced and treated by the methods taught in Chen inherently possess the recited crystalline structure or

haze values. In this regard Applicant respectfully submits that the data presented in the instant application indicates that the achievement of the recited Cell II/Cell III ratio is not achievable absent the optimized selection of appropriate nucleating compounds. Specifically, the data from Page 22, Table 2 of the instant application indicates that the recited Cell II/Cell III ratios do not necessarily follow unless conditions relating to the selection of nucleating compounds are optimized.

Applicants have identified at least two nucleating compounds that, if selected, permit the achievement Cell II/Cell III ratios while also showing that a number of other nucleating compounds failed to provide the recited Cell II/Cell III ratios. Applicant respectfully submits that such evidence clearly indicates that the achievement of the recited Cell II/Cell III ratios is the result of optimization efforts and thus is not properly viewed as being inherent in the prior art. Thus, Applicants respectfully submit that the cited art does not provide a basis to reasonably support the continued obviousness rejection based on inherency.

As relates to independent claim 15, in addition to the arguments set forth above it is respectfully submitted that Chen fails to disclose a process such that a formed thermoplastic formulation containing a test concentration of 70-75% syndiotactic polypropylene (sPP) exhibits the recited haze characteristic of not greater than 16%. Compositions formed by the process disclosed in Chen show inferior clarity in almost every case. This inferior clarity is present even in compositions containing 100% syndiotactic polypropylene. Thus, if the test condition concentrations are evaluated, one would expect far worse clarity performance. This position is supported by the fact that in Chen, as best understood, a reduction of

syndiotactic polypropylene (sPP) in the composition led to an increase in % haze (100% sPP = 17% haze, 90% sPP = 22%-32% haze, and 80% sPP = 23% haze). Unpredictably, Applicant's claimed process provides syndiotactic polypropylene formulations characterized by less than 16% haze even when measured at substantially decreased sPP concentrations of 70-75%. Accordingly, the present invention provides substantially improved performance relative to the processes disclosed in the cited art. Thus, to any extent that the position of obviousness is based on structural or compositional similarity of the starting materials used or compositions produced by the claimed process and the process of the cited art, Applicant respectfully submits that such superior results weigh against continued rejection. See, MPEP §2144.09.

Conclusion:

In light of the above, it is respectfully submitted that all claims stand in condition for allowance.

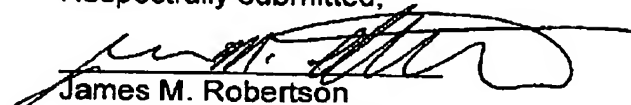
Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

To any extent required for acceptance of this paper, an extension of time is hereby requested.

In the event that there are additional fees associated with the submission

of these papers (including extension of time fees), authorization is hereby
provided to withdraw such fees from Deposit Account No. 50-1424.

Respectfully submitted,



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